

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

GREGORY SIMMONS,

Defendant.

ORDER

13-cr-16-bbc-1

A hearing on the probation office's petition for judicial review of Gregory Simmons' supervised release was held on July 24, 2014, before U.S. District Judge Barbara B. Crabb. The government appeared by Assistant U.S. Attorney Timothy O'Shea. Defendant was present in person and by counsel, David R. Karpe. Also present was Senior U.S. Probation Officer Michael J. Nolan.

From the record and the parties' stipulation, I make the following findings of fact.

FACTS

Defendant was sentenced in the Eastern District of Wisconsin on September 9, 2011, following his conviction for conspiracy to possess with intent to distribute 5 grams or more of cocaine base, cocaine and marijuana, in violation of 21 U.S.C. §§ 841(a)(1),

841(b)(1)(B), and 846. This offense is a Class B felony. Defendant was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 60 months, with a 48-month term of supervised release to follow. On June 14, 2012, the term of imprisonment was reduced to time served and the 48-month term of supervised release was affirmed.

Defendant began his initial term of supervised release on June 27, 2012. On January 16, 2013, the Eastern District of Wisconsin added a special condition of supervised release, requiring defendant to spend up to 180 days in a residential reentry center. On February 4, 2013, jurisdiction was transferred to the Western District of Wisconsin.

On May 1, 2013, defendant's supervised release was revoked for violations that included his use of illegal drugs and his failure to successfully complete his placement at the residential reentry center. He was sentenced to a ten-month term of imprisonment, to be followed by a 24-month term of supervised release.

Defendant began his second term of supervised release on April 1, 2014. On July 10, 2014, defendant violated Standard Condition No. 2, requiring him to report to his supervising probation officer when he failed to report for a scheduled office appointment with his probation officer. On June 12, 2014, he violated Standard Condition No. 6, requiring him to participate in substance abuse testing and residential or outpatient treatment for drug or alcohol abuse, or both, when he failed to report for a urine screen, and on June 13, June 20, June 26, and June 28, 2014, when he failed to report for scheduled

substance abuse counseling sessions.

On July 10, 2014, defendant violated Standard Condition No. 9, prohibiting him from associating with anyone engaged in criminal activity or anyone convicted of a felony unless granted permission to do so by his supervising probation officer, when he and convicted felon Terrance Carr were involved in a traffic stop that resulted in the arrest. Defendant had not been given permission to associate with Mr. Carr.

Defendant's conduct falls into the category of a Grade C violation. Section 7B1.3(a)(2) of the advisory guidelines provides that the court has the discretion to revoke supervised release, extend it or modify the conditions of release.

CONCLUSIONS

Defendant's violations warrant revocation. Defendant's criminal history category is IV. With a Grade C violation, he has an advisory guideline term of imprisonment of 6 to 12 months. Under 18 U.S.C. § 3583(e)(3), the statutory maximum term of imprisonment that can be imposed if supervised release is revoked is two years and two months, because the original offense of conviction is a Class B felony and his previous revocation sentence included a ten-month term of imprisonment.

After reviewing the non-binding policy statements of Chapter 7 of the Sentencing Guidelines, I have selected a sentence at the top of the advisory guideline range to hold

defendant accountable for his violations and to protect the community.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant Gregory Simmons on May 1, 2013 is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of 12 months.

Defendant does not have the financial means or earning capacity to pay the cost of his incarceration.

Entered this 25th day of July, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

U.S. District Judge